

**UNITED STATES DISTRICT COURT**  
**DISTRICT OF MARYLAND**  
Greenbelt Division

CAVAMEZZE GRILL, LLC

Plaintiff,

V.

Case 8:14-cv-00355-JFM

MEZEH-ANNAPOLIS, LLC

and

SALEH MOHAMADI  
7804 Devereux Manor Court  
Fairfax Station, VA 22039

And

STEVE WALKER  
7804 Devereux Manor Court  
Fairfax Station, VA 22039

## Defendants

## SECOND AMENDED COMPLAINT

1. This is an action for service mark infringement, trade dress infringement and unfair competition pursuant to the Lanham Act, 15 U.S.C. § 1051 et seq.

2. Jurisdiction is conferred by 15 U.S.C. § 1121 and 28 U.S.C §§ 1331, 1332 and 1338.

3. Venue is proper in this jurisdictional district pursuant to 28 U.S.C. §§ 1391(b) and 1391(c) in that a substantial part of the events giving rise to the claims occurred in the State of Maryland.

## The Parties

4. CavaMezze Grill, LLC t/a Cava Mezze Grill opened its first fast casual restaurant at 4832 Bethesda Avenue, Bethesda, MD 20814 in 2011. Cava Mezze Grill currently operates five restaurants with locations in Maryland, Washington, DC and Virginia.

5. Plaintiff is the owner of United States Registration No. 4,059,522 for the stylized service mark, CAVA MEZZE GRILL, for restaurant featuring take-out Mediterranean cuisine in Class 43. The color(s) Black, White, Yellow is/are claimed as a feature of the mark. The mark consists of the word “CAVA” in capital letters colored white except for the letter “V” which is in yellow. The mark further consists of the phrase “Mezze Grill” positioned under the word “CAVA” and written in smaller font, wherein the phrase is colored white. All of the foregoing is centered on a black background. A true and correct copy of United States Registration No. 4,059,522 is attached hereto as Exhibit 1.

6. Plaintiff is the owner of United States Registration No. 4,059,523 for the service mark, CAVA MEZZE GRILL, for restaurant featuring take-out Mediterranean cuisine in Class 43. A true and correct copy of United States Registration No. 4,059,523 is attached hereto as Exhibit 2.

7. Upon information and belief, Defendant Mezeh-Annapolis, LLC t/a Mezeh Mediterranean Grill is a Virginia Limited Liability Company having a principal place of business at 1054 Annapolis Mall, Annapolis, MD 21401.

8. Upon information and belief, Steve Walker and Saleh Mohamadi are members of Mezeh-Annapolis, LLC.

### **Background**

9. Plaintiff’s restaurants primarily sell Mediterranean inspired food in an assembly line concept so customers can customize their food to fit their taste. The customer first chooses a base (pita, salad bowl, rice bowl, or mini pitas). They then choose up to three different spices.

They then choose a protein (lamb sliders, chicken, braised beef, gyro meat, falafel or grilled meatballs) and add some fresh toppings such as vegetables and finally sauces. Plaintiff's dishes are made to order using fresh ingredients to achieve a high-quality and delicious product.

10. Plaintiff's, Cava Mezze Grill fast casual restaurants were inspired by the flagship restaurant in Rockville, Maryland that was opened in 2010. When Plaintiff opened other locations, it also used its service mark, CAVA MEZZE GRILL, to identify its restaurants and incorporated elements of the Rockville restaurants into its store design. This restaurant design has come to be recognized by customers as Plaintiff's trade dress.

11. Elements of Cava Mezze Grill's trade dress include: (a) a dark hardwood façade with the stylized logo CAVA MEZZE GRILL; (b) orange, black and white color signage; (c) two color sign made up of white letters with an accentuated orange "V"; (d) orange and white color scheme; and (e) a store layout featuring the counter at the back and an open kitchen plan.

12. Upon information and belief, Steve Walker and Saleh Mohamadi formed the Limited Liability Company, Mezeh-Annapolis, LLC t/a Mezeh Mediterranean Grill on October 19, 2012.

13. Upon information and belief, in or about Spring 2013 Mezeh-Annapolis, LLC opened its restaurant, Mezeh Mediterranean Grill, at 1054 Annapolis Mall, Annapolis, MD 21401.

14. Prior to opening Mezeh-Annapolis, LLC t/a Mezeh Mediterranean Grill, Steve Walker and Saleh Muhamadi were actively recruiting employees of CAVA MEZZE GRILL.

15. Upon information and belief Mezeh-Annapolis, LLC t/a Mezeh Mediterranean Grill hired two employees of CAVA MEZZE GRILL during the development stage of Mezeh-Annapolis, LLC t/a Mezeh Mediterranean Grill and in violation of the two employees' Confidentiality, Non-Disclosure and Non-Solicitation Agreements.

16. Both store managers had worked at Cava Mezze Grill since it had first opened and knew the processes and formulations.

17. Upon information and belief, in or about July 2013 Mezeh-Annapolis, LLC opened its second restaurant, Mezeh Mediterranean Grill, at 11160 Viers Mill Rd, Wheaton, MD 20902.

18. Upon information and belief Mezeh-Annapolis, LLC t/a Mezeh Mediterranean Grill actively recruited and hired a supervisor over two locations of CAVA MEZZE GRILL to work at the recently opened Mezeh Mediterranean Grill Wheaton location.

19. Upon information and belief, Defendant's Mezeh Mediterranean Grill restaurants have: a) a dark hardwood façade with the stylized logo Mezeh Mediterranean Grill; (b) orange, black and white color signage; (c) two color signage accentuating one letter; (d) orange and white color scheme; and (d) a store layout featuring the counter at the back and an open kitchen plan.

20. Defendant's stores primarily sell Mediterranean inspired food in an assembly line concept so customers can customize their food to fit their taste.

21. These similarities have led to numerous comparisons of Defendant's store to CAVA MEZZE GRILL by customers, including on Internet sites such as Twitter. Many of these reviews indicate that customers visit both Plaintiff's and Defendant's stores.

22. On August 22, 2013, CavaMezze Grill, LLC advised Defendant of the customer confusion and demanded that Defendant take steps to distinguish its restaurant from Plaintiff's in the minds of customers.

23. Defendant refused to take any action to abate customer confusion.

24. Defendant's actions and omissions have already caused and are likely to cause confusion, or to cause mistake, or to deceive as to the affiliation, connection, or association of

Defendant with CavaMezze Grill, LLC, or as to the origin, sponsorship, or approval of Defendant's goods, services, and commercial activities by CavaMezze Grill, LLC.

**COUNT I  
SERVICE MARK INFRINGEMENT**

- 25. Plaintiff restates and realleges the foregoing paragraphs as if fully set forth herein.
- 26. Defendant infringed and continues to infringe Plaintiff's federally registered service marks in violation of 15 U.S.C. § 1114(1).
- 27. Defendant's service mark infringement has irreparably harmed and continues to harm Plaintiff. Plaintiff has no adequate remedy at law for the harm caused by Defendant.
- 28. Defendant's service mark infringement is willful.

**COUNT II  
TRADE DRESS INFRINGEMENT**

- 29. Plaintiff restates and realleges the foregoing paragraphs as if fully set forth herein.
- 30. Defendant infringed and continues to infringe Plaintiff's trade dress by unlawfully appropriating the image of Plaintiff's business in violation of 15 U.S.C. § 1125(a).
- 31. Defendant's trade dress infringement has irreparably harmed and continues to harm Plaintiff. Plaintiff has no adequate remedy at law for the harm caused by Defendant.
- 32. Defendant's trade dress infringement is willful.

**COUNT III  
UNFAIR COMPETITION UNDER THE LANHAM ACT**

- 33. Plaintiff restates and realleges the foregoing paragraphs as if fully set forth herein.

34. Defendant's misleading designation of origin has already caused and is likely to cause confusion, or to cause mistake, or to deceive as to the affiliation, connection, or association of Defendant with CavaMezze Grill, LLC, or as to the origin, sponsorship, or approval of Defendant's goods, services, and commercial activities by CavaMezze Grill, LLC. in violation of 15 U.S.C. § 1125(a).
35. Defendant's deceptive acts and omissions have irreparably harmed and continue to harm Plaintiff and to damage the valuable goodwill in Plaintiff's name and image. Plaintiff has no adequate remedy at law for the harm caused by Defendant.
36. Defendant's Lanham Act violations are willful.

#### **COUNT IV**

##### **Common Law Trademark Infringement**

37. Plaintiff restates and realleges the foregoing paragraphs as if fully set forth herein.
38. CavaMezze Grill, LLC owns and enjoys in the State of Maryland and throughout the United States common law trademark and trade dress rights in the federally registered marks and embodied in the design elements of its restaurants.
39. Upon information and belief, Defendants, Mezeh-Annapolis, LLC, Saleh Mohamadi and Steve Wilson's acts have been committed knowingly, in bad faith, and with the intent to cause confusion, mistake, and deception among consumers.

#### **COUNT V**

##### **Unfair Competition under Maryland Code, Commercial Law, Section 13-301(1)**

40. Plaintiff restates and realleges the foregoing paragraphs as if fully set forth herein.

41. Defendants' use of a strikingly similar color scheme consisting of a visually accentuated orange letter in the word "Mezeh" set upon a dark façade as the signage on a restaurant that serves an almost identical menu option is a false or misleading visual description or other representation which has the capacity, tendency, or effect of misleading or deceiving consumers, including those in this District.

42. Defendants' sale of almost identical food from a restaurant that uses a strikingly similar color scheme consisting of visually accentuated orange letter in the word "Mezeh" set upon a dark façade as the signage and logo constitutes unfair competition and an unfair or deceptive trade practice in violation of Maryland Code, Commercial Law, Section 13-301(l). Upon information and belief, Defendants' acts were done knowingly and in bad faith.

**PRAYER FOR RELIEF**

**WHEREFORE** Plaintiff demands judgment:

- (1) That Defendants, its agents, servants, employees and those persons in active concert or participation with Defendant be preliminarily and permanently enjoined and restrained throughout the United States from infringing Plaintiff's service mark, copying Plaintiff's trade dress and otherwise passing its restaurant or any future restaurant off as affiliated with or franchised from Plaintiff;
- (2) That Defendants pay monetary damages, jointly and severally, in an amount to be determined at trial;
- (3) That the Defendants pay enhanced damages, jointly and severally, to justly compensate Plaintiff or for willful infringement pursuant to 15 U.S.C. § 1117;
- (4) That Defendants pay costs pursuant to 15 U.S.C. § 1117;
- (5) That Defendants pay reasonable attorney fees pursuant to 15 U.S.C. § 1117 as Defendants' actions and omissions make this case exceptional;

- (6) That Defendants pay pre-judgment interest; and
- (7) That Plaintiff be awarded such other and further relief as this Court may deem just and proper.

Respectfully submitted,

William D. Day  
William D. Day, #16710  
98 Church Street  
Rockville, MD 20850  
301-251-9200

Attorney for Plaintiff

JURY DEMAND

Plaintiff, CavaMezze Grill, LLC, by its undersigned counsel, demands trial by jury on all claims raised in the Amended Complaint.

William D. Day  
William D. Day